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March 4, 2024

John Fleming, Deputy Clerk  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Re: United States of America ex rel. Christopher Drennen v. Fresenius Medical Care Holdings, Inc., C.A. No. 09-cv-10179-GAO

Dear Mr. Fleming:

We are aware that Judge O'Toole has expressed in *The U.S. District Court Speaks* his desire that case correspondence be directed to you, rather than to him. We are, of course, complying. Because the information/request is intended for his consideration, we would be most appreciative if you would bring this letter to his attention:

I write on behalf of the law firms (the "Fee Petitioners") that represent Relator Christopher Drennen with regard to the Motion for Award of Reasonable Expenses, Attorneys' Fees and Costs Under the False Claims Act, 31 U.S.C. § 3730(d)(1) and (2) (the "Fees Motion") filed on September 15, 2020. See Doc. No. 342.

By way of brief background so that there is no need to search the docket: Intervenor, the United States of America, acting through the United States Department of Justice and on behalf of the Office of the Inspector General of the Department of Health and Human Services (collectively, the "United States"), and Fresenius Medical Care Holdings, Inc. ("Fresenius"), entered into a Settlement Agreement in October of 2019, involving a payment to the United States "under the alternate remedy provision of the False Claims Act, 31 U.S.C. § 3730(c)(5)." Doc. No. 344-2 ¶ 1, at 2. The United States reached a separate agreement with the Relator, and the United States and Fresenius agreed that "Relator and his counsel will seek by motion to the court an award of expenses, fees, and costs against Fresenius," which Fresenius was free to oppose and as to which it reserved its own right to seek an "award of expenses, fees and costs against Relator or his counsel; or both." *Id.* ¶ 4, at 4.

Fee Petitioners filed the Fees Motion on September 15, 2020 (Doc. No. 342). Fresenius filed its Opposition on October 29, 2020 (Doc. No. 368).<sup>1</sup> Since the Fall of 2020, the following events have occurred: The parties engaged in an unsuccessful mediation before Magistrate Judge Bowler on May 13, 2021 (Doc. No. 379). The Court conducted a hearing on the Fees

<sup>1</sup> On September 3, 2020, even before filing the Opposition, Fresenius had already filed a challenge (Doc. No. 341) to the propriety and timeliness of the Fees Motion.



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Motion on July 22, 2021 (Doc. No. 389). The Fee Petitioners from time to time sought and obtained the right to file supplemental authorities relating to the Fees Motion. *See* Doc. Nos. 392, 395, 397, 402.

Most recently, on December 8, 2023 (Doc. No. 403), the Fee Petitioners requested that the Court refer the Fees Motion to Magistrate Judge Dein for a Report and Recommendation. Fresenius opposed on December 15, 2023 (Doc. No. 405). No action has yet been taken by the Court on the Motion.

With that background in mind, the Fee Petitioners submit the following information and request:

The length of time since the filing of the Fees Motion is now giving rise to adverse consequences for some of the Fee Petitioners, who are, of course, the moving parties with regard to the Fees Motion. The Fee Petitioners therefore respectfully, but urgently, request that the Court act one way or the other on the Fees Motion, such that the appellate process is triggered for either or both sides of this dispute. If that is not feasible for any reason, the Fee Petitioners alternatively request that the Court, at its earliest convenience, act upon their Motion for Reference to Magistrate Dein for a Report and Recommendation on Fee Petition (Doc. No. 403).

We thank the Court for its anticipated attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "J A Lukey".

Joan A. Lukey

cc: Charles H. Thronson, Esq.  
James Johnson, Esq.  
Jeremy L. Friedman, Esq.  
Mike Worel, Esq.  
Suzanne Durrell, Esq.  
James F. Bennett, Esq.  
Maria Durant, Esq.